

U.S. Department of
Homeland Security

United States
Coast Guard



PREPARATION OF FIELD REGULATIONS



COMDTINST M16704.3



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COMMANDANT INSTRUCTION M16704.3

Subj: PREPARATION OF FIELD REGULATIONS

1. PURPOSE. This Manual provides guidance on preparing district and captain of the port regulations for publication in the *Federal Register*.
2. ACTION. Use the guidance in this Manual when preparing and issuing a district or captain of the port regulation. The Judge Advocate General is designated and delegated to ensure compliance with this Manual. Internet release is authorized.
3. DIRECTIVES AFFECTED. None
4. BACKGROUND.
 - a. Delegation of Authority. Title 33, Code of Federal Regulations (CFR) § 1.05-1, governs delegation of rulemaking authority. The Commandant periodically reviews field regulation delegations, and changes in field commanders' authority to issue regulations will be reflected in internal correspondence and, ultimately, in 33 CFR § 1.05-1. Each District Commander and COTP has the authority to issue safety and security zone regulations. Only a District Commander has the authority to issue regulations concerning anchorages, drawbridges, regulated navigation areas, special local regulations for regattas and marine parades, lightering zones, and Outer Continental Shelf safety zones. Each Sector Commander has authority to issue the same regulations as a District Commander or COTP only when the Sector Commander holds District Commander or COTP authority. Only an Area Commander has the authority to issue a Naval Vessel Protective Zone.

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- b. Exception. The Commandant has reserved the authority to issue field regulations that are extremely costly or controversial or that otherwise have substantial impact.

5. DISCUSSION.

- a. Rulemaking. The process for preparing regulations is called “Rulemaking.” This manual contains an explanation of rulemaking policies, procedures, and requirements.
- b. Summary of Changes. This Manual has been reissued to replace the previously cancelled instruction.

6. INTRODUCTION.

- a. This Manual has been designed to enable field personnel to prepare field regulations efficiently and correctly even when they are inexperienced in this area, and to provide the resources necessary to answer common questions and problems. If you are relatively new to the preparation of field regulations, and your objective is to learn how to draft such a document, turn first to the checklist at Enclosure (1). Alternatively, if you already have the appropriate template for the document you need to write, but have a question about a particular part or aspect of the document, use the Table of Contents to find guidance.
- b. A Few Common Mistakes:
 - (1) A regulation must be signed before it takes effect. This means that when a regulation is signed after the effective period of the regulation has passed, the regulation never took effect and was not enforceable. Similarly, if a field regulation is signed after it is scheduled to take effect, but before the effective period is scheduled to end, the regulation was effective only for the period of time after it was signed. Thus, when a safety zone for a boat race that ran from Saturday morning to Sunday afternoon was signed on Sunday morning, the zone was never in effect until Sunday morning.
 - (2) An effective regulation cannot be enforced against people who have not received prior notice of the regulation. When a regulation is published in the *Federal Register*, the entire public receives constructive notice and the regulation is enforceable against all members of the public. In the absence of constructive notice, the Coast Guard must give actual notice to those against whom it wishes to enforce the regulation.
 - (3) Giving the public notice and an opportunity to comment by publishing a notice of proposed rulemaking (NPRM) is the normal and preferred procedure for issuing field regulations. An exception to this rule is available when lack of time would make publication of an NPRM impractical, and for other reasons which will be discussed in Chapter 1. Generally, field units should not claim this exception if an NPRM can be published four months or more before the planned effective date of the regulation. Field units should also work with event sponsors and educate the public about the need to submit requests for local regulations far enough in advance to enable publication of an NPRM.

(4) The Coast Guard is also required by law to give the public notice at least 30 days before a regulation takes effect. As with the requirement to publish an NPRM, an exception to this requirement permits a shorter notice period when at least 30 days is not practical, and for other reasons. Generally, when a field unit knows of the need for a field regulation 60 days or more before the effective date, claiming a good cause exception because of impracticality is not appropriate. For example, field regulations associated with marine events that recur annually will not normally claim this exception.

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Manual and have been determined to be not applicable, but may be applicable to the subject matter of future field regulations..

8. FORMS/REPORTS. None.

W. D. Baumgartner
Judge Advocate General
/s/

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CHAPTER 1. RULEMAKING IN GENERAL

A. Rules and Rulemaking.

1. A rule is a published statement by an agency informing the public that it must do something or refrain from doing something in certain circumstances. Coast Guard field units have been using the rulemaking process for decades, and field regulations are an invaluable tool for commands to help ensure maritime safety and security.
2. In legal terminology, a rule is an agency statement designed to either (1) implement, interpret, or prescribe law or policy or (2) describe the organization, procedure, or practice requirements of an agency. The *Administrative Procedure Act* (APA), 5 U.S.C. § 553, which governs all federal agency rulemaking, defines a rule as "an agency statement of general or particular applicability." A rule in this context is also generally understood to mean a statement by the agency that is intended to address a class of situations, rather than a named individual.
3. Coast Guard rulemakings that have a national effect on the public or are particularly controversial are drafted at Coast Guard Headquarters. Non-controversial rules that affect only localized areas are drafted by field units. The responsibility for the legal sufficiency of a field regulation lies with the legal office for the District in which the drafting field unit is located. This manual will explain the different types of field regulations available to field units, the necessary components of those field regulations and discuss key legal issues related to them.

B. Informal Rulemaking – Notice and Comment.

1. The guidance described in this manual applies to informal (also known as notice and comment) rulemaking. By way of contrast, formal rulemaking requires additional trial-type procedures, which are generally not applicable to field regulations. All Coast Guard field regulations are a product of informal rulemaking.
2. The APA governs Coast Guard rulemaking. There are two significant rulemaking procedural requirements in the APA that must be followed in every rulemaking unless one of the exemptions discussed in paragraphs 1(B)(3) through (6), below, applies:
 - a. Publish a notice of proposed rulemaking (NPRM) that contains the text of the proposed rule and invites public comment before issuing a final rule, and;
 - b. No rule may become effective until at least thirty days after publication in the *Federal Register*.
3. An agency may conduct a rulemaking without meeting one or both of these requirements, though, if the agency finds good cause. "Good cause" in this context is a legal term meaning that these procedures are impractical, unnecessary, or contrary to the public interest. If an agency does not publish an NPRM and/or the final rule takes effect less than 30 days after publication, a detailed explanation of the good cause finding must accompany the final rule when it is published in the *Federal Register*.

4. According to the legislative history of the APA, the term “unnecessary” means unnecessary so far as the public is concerned, as would be the case with a minor or merely technical amendment in which the public is not particularly interested. “Impractical” means a situation in which the required execution of the agency’s functions would be unavoidably prevented by undertaking the public rulemaking proceedings. Good cause exceptions based upon the public interest are typically used for emergency health or safety rulemakings.
5. Administrative convenience alone does not establish good cause, and the Coast Guard strongly encourages all units to plan far enough ahead to permit solicitation of public comments in an NPRM and publication of the final rule at least 30 days before the rule takes effect. Whatever the basis for claimed good cause, the APA requires the Coast Guard to articulate its finding and include a brief statement of reasons in a discussion that accompanies the rule when it is published in the *Federal Register*.

C. Public Comment.

1. Public comment on proposed rules is an essential component of the notice-and-comment rulemaking process established by the APA. 5 U.S.C. § 553(c) requires that interested members of the public *must* be given an opportunity to comment on an NPRM unless one of the exemptions discussed in paragraph 1(B), above, applies. The following sections discuss procedures that are applicable if your rulemaking is not exempt from the general requirement.
2. Public comments are normally received in writing or at public meetings. These comments may include data, opinions, or arguments. You need not accept comments over the telephone but, if you do, say so explicitly in the NPRM, reduce all verbal comments to writing, and post them in the docket with the submitter’s name and contact information. Accepting comments over the telephone is generally discouraged because of the added administrative burden and the possibility that the submitter’s intent might not be reflected in the written comment. Also, post all comments submitted in writing to the docket. An opportunity for oral presentations at public meetings may be offered but is not required. Verbatim transcripts of public meetings are not required, but if a transcript is made, or minutes are taken, a copy must be posted to the docket.
3. The comment period is normally 30 to 90 days long, although a longer period should be provided if needed to allow a sufficient opportunity for meaningful public input. If less than 30 days is provided, the NPRM must contain an accompanying statement of reasons explaining the factors necessitating a shorter comment period (see section 1(B), above).
4. Federal Register publication of an NPRM is not required if all persons to be affected by the rule receive actual notice of the proposed rule. See 5 U.S.C. § 553(b) for direction on the information that must be included in actual notices of proposed rules. Field units should not attempt to give actual notice instead of publishing an NPRM without first consulting the District Staff Judge Advocate’s (SJA’s) Office.
5. Whenever appropriate, notice of publication should also be provided in a notice to mariners, newspaper, or other publication likely to be read by affected persons. If an NPRM is published locally in addition to publication in the *Federal Register*, the local notice must

include the same comment period closing date that appears in the *Federal Register*. Identical dates are needed to prevent any unfairness to those who wish to provide comments.

D. Code of Federal Regulations Requirements. Coast Guard policy, as stated in Title 33, Code of Federal Regulations (CFR) § 1.05-15, is to usually allow at least 90 days after publication of an NPRM for the public to submit comments. Subsequent rulemaking documents must concisely state what comments were received, why the Coast Guard agreed or disagreed with them, and identify any changes made to the proposed rule in response to the comments.

E. Executive Order 12866 Guidelines. Section 6 of Executive Order (E.O.) 12866 calls for agencies to seek the involvement of those persons expected to benefit from or be burdened by a rule, beginning before publication of the NPRM. It calls for a public comment period which, in most cases, should be at least 60 days. This provision is a guideline, not a requirement.

F. Department of Homeland Security Requirements. Department of Homeland Security (DHS) Management Directive (MD) 0490.1, *Federal Register Notices and Rules*, (January. 24, 2003), § VI.B, requires each directorate and office to give the public an early and meaningful opportunity to participate in the regulatory process, “consistent with applicable law and the circumstances of a regulatory action.” As a guideline, at least 60 days should be allowed for comment on rules defined as significant regulatory actions under E.O. 12866, rules that would have a significant economic impact on a substantial number of small entities according to the *Regulatory Flexibility Act* (RFA), 5 U.S.C. §§ 601, et seq., or would include new requirements for collection of information. E.O. 12866 is discussed in greater detail in section 4(E), and the RFA is discussed in more detail in section 4(F), below.

G. Summary of Public Comment Requirements. When drafting your rule, it is vital that you abide by these requirements and consider these guidelines. Notice and comment rulemaking is built upon the foundation of public participation, not agency convenience. Failure to comply with the requirements of the APA may increase public opposition to a new rule, and invite litigation that can lead to a federal court declaring the rule invalid. Conversely, public participation not only helps the Coast Guard satisfy its own legal requirements, but in the end also leads to better rules.

H. The Notice Requirement.

1. According to the Federal Register Act (44 U.S.C. § 1507), a rule is not enforceable against a person who does not have actual knowledge of it until the rule has been filed with the Office of the Federal Register and a copy has been made available for public inspection by that Office. Once the rule is properly filed and made available for inspection, the public is deemed to have constructive notice of it. Rules are usually published in the *Federal Register* the next working day after being made available for public inspection. Generally, if a rule is published in the *Federal Register*, no actual notice is required before enforcement action may be taken.
2. Publication in the *Federal Register* creates a rebuttable presumption that:
 - a. The document was duly issued, prescribed, or promulgated;
 - b. The document was filed and made available for inspection;

- c. The copy contained in the *Federal Register* is a true copy of the original; and,
 - d. The agency complied with all requirements of the Federal Register Act.
3. If a valid rule will not publish in the *Federal Register* before its effective period begins, the Coast Guard must ensure persons subject to the rule have actual notice of it before any enforcement action can be taken. The APA requires rulemakers to publish notice in the *Federal Register* or give affected parties actual notice. Publication in Local Notices to Mariners or Broadcast Notices to Mariners is not a legally acceptable substitute for publication in the *Federal Register*.

I. Coast Guard Rulemaking Procedures, Authority & Responsibility.

The CFR contains rules that define rulemaking procedures specifically for the Coast Guard. These procedures are described generally in 33 CFR subpart 1.05. Paragraph 1.05-10 of that subpart provides an overview of the Coast Guard regulatory process, and distinguishes between field regulations and headquarters regulations. Field regulations generally consist of those types of regulations that are issued by District Commanders and Captains of the Port (COTP), unless the proposed regulation is classified as significant under E.O. 12866, in which case it is issued by the Commandant. E.O. 12866 is discussed in greater detail in Chapter 4, Section E.

J. Delegation of Rulemaking Authority.

Title 33, CFR § 1.05-1, governs delegation of rulemaking authority. The Commandant periodically reviews field regulation delegations, and changes in field commanders' authority to issue regulations will be reflected in internal correspondence and, ultimately, in 33 CFR § 1.05-1. Each District Commander and COTP has the authority to issue safety and security zone regulations. Only a District Commander has the authority to issue regulations concerning anchorages, drawbridges, regulated navigation areas, special local regulations for regattas and marine parades, lightering zones, and Outer Continental Shelf safety zones. Each Sector Commander has authority to issue the same regulations as a District Commander or COTP only when the Sector Commander holds District Commander or COTP authority. Only an Area Commander has the authority to issue a Naval Vessel Protective Zone. See paragraph 3.C.26, *Signature Block*, concerning Sector Commanders' signatures on field regulations.

K. Ex parte Contact and Congressional Interest.

- 1. DHS MD 0490.1, § VI.B.2 strongly discourages *ex parte* communication – that is, private communications between agency employees involved in the rulemaking and individuals outside the agency - following publication of a proposed rule. A record of such communications should be posted in the docket, and any such communications that affect the substance of the final rule should be discussed in the *Federal Register* when the final rule is published. See Chapter 7, Section D, for instructions on recording and docketing notice of *ex parte* contacts.
- 2. Additionally, DHS MD 0490.1, § VI.B.3, requires directorates and offices to promptly provide the General Counsel with a copy of any written comment from a member of Congress that

criticizes or opposes a proposed rule, and to coordinate any preparation of a written response with the General Counsel.

L. Basic Responsibilities.

1. Each official who issues a regulation must ensure that the regulation is:
 - a. Necessary, clear, as short and uncomplicated as possible, timely, reasonable, and fair;
 - b. Compliant with all federal laws, regulations and directives;
 - c. Within the scope of delegated authority;
 - d. Prepared in coordination with other Federal agencies as appropriate, and;
 - e. Reviewed on an ongoing basis after issuance and revised as needed or cancelled.

M. Types of Coast Guard Field Regulations.

1. **Inland Waterways Navigation Regulations (33 CFR Part 162).** This part contains regulations governing maritime activity on specific inland waterways. These regulations include, but are not limited to, restricted areas, limitations on vessel speed and size, and rules on stopping, passing, anchoring, mooring and towing. The District Commander is authorized to establish inland waterway navigation regulations.
2. **Security Zones (33 CFR Part 165 Subpart D).**
 - a. Generally, a security zone is an area of water and/or land designated for a certain time to protect vessels, harbors, ports and waterfront facilities from sabotage, damage or injury due to subversive acts, accidents or other causes of a similar nature. To provide protection to a vessel or waterfront facility, a security zone will often surround a vessel or a waterfront facility, preventing other vessels from approaching.
 - b. If a new security zone either encompasses any part of a traffic separation scheme (TSS) or causes additional vessels to enter a TSS, inform the public that Rule 10 of the *International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS)* governs vessels in a TSS. See 33 U.S.C. §§ 1602 and 1603; 28 *United States Treaties and Other International Agreements* 3459; *Treaties and Other International Acts* Series 8587.

Example: To guard against injury from sabotage or other subversive acts, the COTP established a security zone 250 yards around the facility and vessels unloading spent nuclear fuel.
3. **Safety Zones (33 CFR Part 165 Subpart C and 33 CFR Part 147).**
 - a. Generally, a safety zone is an area of water and/or land designated for a certain time *for safety or environmental purposes*. To protect human safety or the environment, a safety

zone will limit public access to the area. Except for those situations where a safety zone is needed around an Outer Continental Shelf facility, safety zones may not extend beyond the twelve-mile territorial sea. Regulations governing the establishment of safety zones on the Outer Continental Shelf are located in 33 CFR Part 147. Either a District Commander or COTP may establish a safety zone under 33 C.F.R. Part 165(C), but only a District Commander may establish a safety zone on the Outer Continental Shelf.

- b. If a new safety zone either encompasses any part of a traffic separation scheme (TSS) or causes additional vessels to enter a TSS, inform the public that 72 COLREGS governs vessels in a TSS. See 33 U.S.C. §§ 1602 and 1603; 28 United States Treaties and Other International Agreements 3459; Treaties and Other International Acts Series 8587.

Example: To protect the safety of spectator vessels, the COTP issued a safety zone surrounding a river barge used to launch fireworks. See the section on Special Local Regulations for an explanation of the difference between that type of regulation and a safety zone.

4. **Regulated Navigation Areas (33 CFR Part 165 Subpart B).** A regulated navigation area is a water area within a defined boundary for which regulations for vessels navigating within the area have been established. The District Commander can issue a regulated navigation area to control vessel traffic in a place determined to have hazardous conditions. Regulated navigation areas usually prescribe what type of vessels may enter the area, restricting vessel clearance, draft, and length, or in what manner they may travel. Regulated navigation areas differ from safety and security zones in two respects: First, District Commanders are authorized to establish regulated navigation areas; COTPs may not. Second, safety and security zones are typically transitory in nature, responsive to a temporary safety or security concern on the water, and establish control of access to an area; but they may condition access on compliance with specified temporary operating conditions within the safety or security zone necessary for the purpose of the zone's creation. Regulated navigation areas are usually created where a more permanent solution to a noted safety or environmental concern is required. They principally regulate the operation of those vessels permitted inside the area, but may establish control of access to an area if such controlled access is necessary.

Example: After determining that the waters surrounding the Tomlinson Bridge on the Quinnipiac River were hazardous to certain vessels, the District Commander issued a regulated navigation area establishing the following requirements: barges with a freeboard greater than ten feet and vessels towing or pushing these barges on outbound transits of the Tomlinson Bridge may not transit the bridge during the period from one hour to five hours after high water slack, when the wind speed is greater than twenty knots, and when the barge is being towed on a hawser, stern first. Regulated barges with a beam of greater than fifty feet must be pushed ahead through the bridge.

5. **Special Anchorage Area/Anchorage Ground (33 CFR Part 110).** A special anchorage area is a designated water area within which vessels sixty-five feet or less in length are not required to carry or exhibit the white anchor lights required by Navigation Rules. An anchorage ground is a designated water area in which rules and regulations are adopted with respect to

anchoring vessels. In other words, a special anchorage area only exempts smaller vessels from exhibiting anchor lights, while an anchorage ground may prescribe several rules with respect to anchoring vessels.

Example: The District Commander established a special anchorage area exempting vessels sixty-five feet or less in length from exhibiting white anchor lights required by Navigation Rules. In another area, the District Commander established an anchorage ground for commercial ships conducting bunkering operations subject to the following rules: 1) Lightering operations are prohibited in the anchorage ground and 2) No vessel may anchor in the anchorage ground for a period longer than twenty-four hours without permission of the COTP.

6. **Drawbridge Operation (33 CFR Part 117).**

- a. Drawbridges must open on signal unless otherwise specified in 33 CFR part 117, subpart B.
- b. For any temporary change to the operating schedule of a drawbridge lasting less than or equal to 180 days, the District Commander may issue a deviation approval letter to the bridge owner or operator who requested the change, and publish a “Notice of deviation from drawbridge regulation” in the *Federal Register*. If the time period of a temporary change to the operating schedule of a drawbridge will be greater than 180 days, the District Commander will follow appropriate rulemaking procedures and publish a temporary rule in the *Federal Register* prior to the start of the action. 33 CFR 117.35(a) and (b).
- c. The owner or operator of the draw must request and receive permission from the appropriate District Commander before deviating from the operating schedules in part 117. The District Commander may issue permission to deviate from those schedules in letter format. If the operation of the draw will be affected for 180 days or less, a notice of the temporary deviation must be published in the *Federal Register*. If the operation of the draw will be affected for more than 180 days, then a temporary deviation is not authorized, and the District Commander must publish a temporary rule to cover the repair period. 33 CFR § 117.35 affords District Commanders flexibility and discretion to temporarily change bridge operating schedules in response to inclement weather, repair or maintenance needs, public events, to test alternative operating schedules, and to protect public health and safety.
- d. For a permanent or interim schedule change, see paragraph 1(N)(5) of this manual.
- e. See detailed templates tailored especially for the Bridge Administration program in the CG-0943 templates online, which can be accessed by following the instructions in Enclosure 2.

Example: The operator of the Terrebonne Parish Bridge requested the Eighth District Commander to authorize deviation from the schedule published in 33 CFR part 117 to facilitate five months of repairs. The Eighth District Commander issued a letter to the

operator authorizing the deviation. The District Commander also published a notice of temporary deviation in the *Federal Register* and in the Local Notices to Mariners. When the Eighth District received further notification that the condition of the bridge was worse than expected, extending the anticipated time of repair to eight months, the District Commander authorized publication of a temporary final rule in the CFR as required.

Example: The owner of the Woodrow Wilson Memorial Bridge requested that the Fifth District Commander authorize deviation from the operating schedule described in part 117 to test a new schedule for a period of 120 days. If the Fifth District Commander approves the request, a notice must be published in the *Federal Register* requesting public comment on the schedule being tested. If the owner wishes to permanently adopt the new operating schedule, then a rulemaking must be conducted to affect a change in part 117 of the CFR.

7. **Special Local Regulations (Regattas and Marine Events) (33 CFR Part 100).** Special local regulations are promulgated in conjunction with a marine event. A marine event is an organized event of limited duration held on the water according to a prearranged schedule. Special local regulations are promulgated to promote safety of life on the navigable waters immediately before, during, and immediately after a marine event. Special local regulations differ from safety zones in two respects: (1) The District Commander is authorized to issue special local regulations; the COTP may not; and (2) Special local regulations usually consist of a variety of designated areas which are regulated in a variety of ways.

Example: To promote safety of life on navigable waters immediately before, during and immediately after the power boat race, the District Commander issued special local regulations establishing three areas: (1) a "spectator area" restricting vessels to operate at No Wake Speed; (2) a "buffer zone" excluding all vessels; and (3) a "race area" limiting access to all vessels except those participating in or conducting the race.

- N. **Different Kinds of Notices, Rules & Requests for Comment.** The *Federal Register* notice is a flexible device, and field units may use the *Federal Register* to publish a variety of notices. Among the more common types of notice are:

1. **Meeting Notices.** This type of notice serves to announce the date, time and place of a meeting. A meeting notice can be issued either as a stand-alone document or as part of an Advance Notice of Proposed Rulemaking, an NPRM, or a Supplemental Notice of Proposed Rulemaking (each of these types of notices is discussed further in paragraph 4 of this section below). A notice that is not part of a rulemaking need not include a Regulatory Identification Number. If written comments are solicited or accepted in place of attendance at the meeting, or in addition to remarks made at the meeting, the team must include a Headquarters, District, or COTP docket number in the notice.
2. **Notices of Extension or Reopening of the Comment Period.** These can be issued if a field unit determines that a comment period for a rule that has closed needs to be reopened, or that an open period needs to be extended. Terminations should be coordinated with the District SJA's Office. Comments received prior to a termination must be addressed, and a reasonable basis for termination must be given.

3. **Notices of Termination of the Comment Period.** These are used when the field unit decides to terminate a rulemaking that has been the subject of a previous *Federal Register* publication.

4. **Proposed Rules.**

- a. **Notices of Proposed Rulemaking.**

- (1) Under 33 CFR 1.05-35, Coast Guard rulemakings generally involve the publication of an NPRM. The NPRM contains a preamble statement in sufficient detail to explain the proposal, its background, basis, and purpose, and the various issues involved. It also contains a discussion of any comments received in response to prior notices, a citation of legal authority for the rule, and the text of the proposed rule.
 - (2) An NPRM should precede every Coast Guard final rule, even if that rule is temporary in nature. The NPRM should be published three months or more in advance of the planned effective date of the final rule. This allows 30 days for public comment, 30 days to publish the final rule, and the normal 30 day delay between the publication of the final rule and the effective date. If necessary, an NPRM can be published within a shorter time frame; however, the comment period should seldom be less than 30 days and, as provided in 5 U.S.C. 553(d), good cause must exist for making the final rule effective less than 30 days after publication.

- b. **Advance Notices of Proposed Rulemaking.**

- (1) An ANPRM is a notice published in the "proposed rule" section of the *Federal Register*. The purpose of the notice is to request comments concerning a rulemaking project before an NPRM is issued.
 - (2) Publishing an ANPRM allows early participation in the development of regulations before an NPRM is formulated. It serves as a method of public consultation where the scope of the regulatory project has been tentatively defined and it appears likely that the project will continue to the promulgation of final rules.
 - (3) The content of an ANPRM document is flexible. It may contain only a general description of the rulemaking project, or it may present alternative approaches being considered, or it may simply present discussion concerning specific questions or areas of concern in the rulemaking. Publishing the exact text of proposed rules is not required. See 33 CFR 1.05-30.

- c. **Supplemental Notices of Proposed Rulemaking.** According to 33 CFR 1.05-40, a Supplemental Notice of Proposed Rulemaking (SNPRM) may be issued if a proposed rule has been substantially changed from the original NPRM. The SNPRM advises the public of the revised proposal and provides an additional opportunity for comment on the changes. To give the public a reasonable opportunity to become reacquainted with a rulemaking, an SNPRM may also be issued if considerable time has elapsed since publication of the NPRM. An SNPRM contains the same type of information generally included in an NPRM. Note that an

SNPRM is not required for all changes in the proposed rule, so long as the changes are in character with the original proposal and are logical outgrowths of the notice already given.

5. **Effective Rules.**

a. **Interim Rules.** Under 33 CFR 1.05-45, an interim rule (IR) may be issued when it is in the public interest to put a rule into effect in the short term, while holding open the possibility of long term refinement. For example, an IR may be issued when the authorizing statute requires immediate rulemaking. If an IR is not preceded by an NPRM, the IR must contain an explanation of the good cause. See Chapter 1, Section B for a discussion of good cause. Use of an IR is helpful when we anticipate needing to make minor adjustments in light of our experience under the IR, or when we are ready to act on some discrete parts of a regulatory scheme but need more time to develop the scheme in all its parts. An IR can defer public notice and comment to subsequent “permanent” rulemaking, or an IR can request public comments that can be useful in formulating a final rule. Generally, an IR will have an effective date at least 30 days after the date of publication.

b. **Direct Final Rules.**

- (1) According to 33 CFR 1.05-55, a direct final rule (DFR) may be issued to allow non-controversial rules that are unlikely to result in adverse public comment to become effective more quickly. DFRs are published with effective dates at least 90 days following publication. The public is usually given at least 60 days to comment on the DFR. If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, we publish a notice in the *Federal Register* confirming that the rule will take effect as scheduled. If we do receive an adverse comment or notice of intent to file such a comment, we publish a notice withdrawing the DFR. We then have the option of proposing the rule using normal NPRM procedures. A DFR should be published only if the likelihood of receiving an adverse comment is very low, and there is an important need for the rule to become effective faster than would be possible if a notice and comment rulemaking was used. Consultation with CG-0943 is required before a DFR is published.
- (2) Section 1.05-55 also provides for situations involving adverse comment on discrete portions of a DFR.
- (3) How effective is the DFR in streamlining rulemaking? If standard timelines are observed, a DFR can save at least 30 days (DFR becomes effective 90 days after publication) over the conventional final rule preceded by an NPRM (allow 90 days after publication of an NPRM for submission of comments, then an indefinite time period to consider the comments and issue the final rule, then 30 days from final rule publication to its effective date = 120 + days). Remember, however, that a DFR does not reduce the number of *Federal Register* publications required, and that DFR publication must always be followed either by a notice of confirmation or withdrawal.

c. Temporary Rules. As its name suggests, a temporary rule is of limited duration and has a clearly defined beginning and end. A temporary rule must be described as such in the Federal Register publication's action line, and the temporary nature of the rule also must be discussed under the "Dates" and "Supplementary Information" sections. Be aware that when temporary rules expire, they are no longer effective. The expiration date of a temporary rule may be extended by publication of a notice in the *Federal Register* only if the notice publishes before the original expiration date. Temporary rules can be found through the List of CFR Sections Affected (see Chapter 2, Section I), but are generally not printed in the CFR and not posted on the Electronic CFR. The majority of Coast Guard field regulations are temporary rules that, when done correctly, have been preceded by an NPRM.

d. Final Rules.

- (1) A final rule is the basic rulemaking document used to make a permanent change to the CFR. 33 CFR §§ 1.05-50 and 1.05-55 permit some final rules to be issued without prior notice and comment. However, most rulemakings do involve notice and comment, and the final rule is not issued until all such comments have been considered. A final rule document contains a preamble that discusses and responds to any comments we received, sets out the rule's legal authority, provides its text, and identifies and explains any changes made in the text since it was last published in an NPRM, SNPRM, or IR.
 - (2) A final rule is the recommended instrument for recurring marine events. That is to say, instead of issuing a temporary rule for the same event every year, the field unit should issue a single final rule and, if necessary, publish a notice of implementation if exact future dates cannot be determined with absolute certainty.
 - (3) An IR and a DFR, may *also* be temporary rules.
6. **Correction Documents.** Field units must have someone proofread what is published in the *Federal Register* against a file copy of the document as soon as it is published. The field unit must take steps to correct any errors, whether they were made by the Coast Guard or were introduced by the *Federal Register* editorial staff, and whether substantive or non-substantive. The *Federal Register Document Drafting Handbook* contains detailed instructions for correcting errors, and can be accessed on the internet at <http://www.archives.gov/federal-register/write/handbook/>. In implementing those instructions, the field unit works with its District SJA's Office. Additionally, all corrections must be coordinated with a CG-0943 attorney who is designated as a liaison with the Office of the Federal Register (OFR).
 7. **Requests for Comment.** The Coast Guard routinely requests public comment when it publishes an ANPRM, NPRM, or SNPRM in the *Federal Register*. In addition, sometimes field units will issue a "Notice; Request for comment" or RFC, intended to solicit public input about industry conditions, the need for rulemaking, or other general and preliminary matters. In such cases, the RFC is published without a Regulatory Identification Number (RIN) but with a District or COTP docket number. The unit drafting the RFC will maintain the docket for the RFC and keep track of comments.

CHAPTER 2. TOOLS OF THE TRADE

- A. **General.** This section contains an overview of the tools necessary to draft and track field regulations. A basic familiarity with these tools will lead to legally sufficient, thorough and timely published field regulations.
- B. **District and Area Legal Offices.** The Coast Guard field unit's first step for advice, guidance and legal review is the unit's District Staff Judge Advocate (SJA). The District SJA is responsible for ensuring the legal sufficiency of every rule, ensuring that its style and format is suitable for publication in the *Federal Register*, and coordinating District rule making activities with the Area SJA.
- C. **The Code of Federal Regulations.** The Code of Federal Regulations (CFR) contains a complete listing of all permanent federal rules. The CFR should be a field unit's first stop to ascertain the provisions of the existing law when contemplating a rulemaking. The CFR is published annually by the Government Printing Office (GPO), and is available online through the GPO Access web page at <http://www.gpoaccess.gov/cfr/>.
- D. **The Electronic CFR.** The electronic CFR (e-CFR) is a prototype system that is updated more frequently than the GPO Access web page, and is available at <http://www.gpoaccess.gov/ecfr>. Although the e-CFR has the advantage of being more current, it is not an official legal edition of the CFR.
- E. **CG-0943 Field Regulation Templates.** CG-0943 has created a series of templates that have been made available to field units to assist them in drafting their rules. These templates are best used to guide the formation of a rule and to ensure that all the necessary sections of the rule have been addressed. Care must be taken to ensure that each part of the rule is adequately addressed, not given a cursory glance. In the event that the future statutes and executive orders change the requirements governing the content of rule making documents, CG-0943 will update the templates to reflect those changes. These templates are available on-line, and can be accessed by following the directions in Enclosure 2.
- F. **Federal Register Document Drafting Handbook.** Field regulations must be drafted in accordance with the Federal Register *Document Drafting Handbook* available on-line at <http://www.archives.gov/federal-register/write/handbook/>. **The checklists in this handbook are very helpful as step-by-step guides to reviewing or drafting a field regulation.**
- G. **The Federal Register.** The *Federal Register* is a daily publication put out by the GPO. The *Federal Register* contains a daily listing of all federal agency rulemakings and notices, and is the first place that Coast Guard rulemakings are published. Frequent monitoring of the *Federal Register* is essential to track Coast Guard rulemakings. Although publication in the *Federal Register* has, in the past, been considered the earliest point at which constructive legal notice occurs, "posting" by the Office of the Federal Register (OFR) on its web site has been deemed constructive legal notice. The *Federal Register* is available online at <http://www.archives.gov/federal-register/index.html>.

- H. Congressional Review.** The Congressional Review Act requires that all federal rules be sent to Congress for ultimate review. Although CG-0943 is responsible for the administrative task of sending copies of every rule to Congress, each field unit has the responsibility to ensure that every rule it drafts has an adequate statement of basis and need, follows the legal and procedural requirements of the *Administrative Procedures Act* (APA), 5 U.S.C. § 553, and complies with all relevant Executive Orders and other legal requirements.
- I. List of CFR Sections Affected.** The List of Sections Affected (LSA) is a quarterly publication published by the GPO that contains updates to the CFR. The LSA contains all changes in the LSA from the previous three months. The LSA together with the online CFR are vital tools to ensure that field units have a complete and accurate picture of current Coast Guard rulemakings.
- J. Marine Safety Manual** The *Marine Safety Manual Volume VI, Ports and Waterways Activities*, , COMDTINST M16000.11 (series), provides guidance on many of the types of field regulations routinely issued by field organizations, and can be accessed on the *Coast Guard Directives System* web page at <http://www.uscg.mil/CCS/CIT/CIM/DIRECTIVES/WELCOME.HTM>.
- K. Bridge Administration Manual** COMDTINST M16590.5C is a valuable resource when drafting drawbridge regulations, and can also be accessed on the *Coast Guard Directives System* web page at <http://www.uscg.mil/CCS/CIT/CIM/DIRECTIVES/WELCOME.HTM>.
- L. The Government Printing Office Style Manual** The GPO Style Manual contains the standard guidance for grammar, spelling, punctuation and construction expected from all federal publications. It is available on-line at <http://www.gpoaccess.gov/stylemanual/browse.html>.

CHAPTER 3. DRAFTING THE RULE

A. General. As discussed in Chapter 1, most regulations are required by the *Administrative Procedures Act* (APA), 5 U.S.C. § 553(b), to be published first as proposals before being finalized. The document in which a proposal is published is called a notice of proposed rulemaking (NPRM) and, with few exceptions, each NPRM and final rule must be published in the *Federal Register*. 5 U.S.C. §§ 552(a) and 553(b).

B. Format and Style.

1. Parts 18, 21, and 22 of Title 1, Code of Federal Regulations (CFR), contain several technical requirements concerning format and style of regulatory documents. Compliance with these requirements can normally be achieved by adhering to the format and style of CG-0943's online templates. CG-0943 has prepared a series of templates to assist in the drafting of Coast Guard field regulations. These templates are updated regularly and are available online by following the instructions in Enclosure 2. The templates are excellent guides to the standard format and style expected of all Coast Guard field regulations. For unusual drafting situations, see the *Federal Register Document Drafting Handbook*, available online at <http://www.archives.gov/federal-register/write/handbook/>, or contact CG-0943.
2. Title 1 CFR, § 18.12, prescribes the format of the preamble, which consists of that portion of the document from and including the "Agency" caption through the "List of Subjects" section. The component parts of the preamble are discussed below in Section III, and in more detail in this chapter and in Chapter 4.

C. Individual Parts.

1. **Billing Code.** The billing code should be placed at the top right hand corner of the first page of every rulemaking document. The billing code is used by the Government Printing Office (GPO) to determine which agency to bill for publishing the document in the *Federal Register*. The Coast Guard sends a conformed e-version of every rule along with the signed original document to the *Federal Register*. Sending a conformed e-version reduces the cost per document to the Coast Guard. Every Coast Guard rulemaking must have a billing code of 4910-15-U.
2. **Parts Affected.**
 - a. On the first page of every Coast Guard rulemaking document, you need to indicate what "part" of the CFR your rule is going to affect, and whether you are adding, revising or removing a section. The "parts affected" line appears on the first page of the document following the Department, which will always be "DEPARTMENT OF HOMELAND SECURITY", and the agency which will always be "Coast Guard".

Example:

DEPARTMENT OF HOMELAND SECURITY

**Coast Guard
33 CFR Part 165**

- b. If your rule affects multiple parts, each part that is being affected must be indicated. List the parts affected in numerical order.

Example:

33 CFR Parts 117 and 165

- c. If a document titled as a notice discusses proposed changes in an ongoing rulemaking project, the Office of the Federal Register (OFR) will publish the document in the “Proposed Rules” section, instead of the “Notices” section, of the *Federal Register*. If a field unit chooses to publish a notice in this way, the CFR parts affected must be listed according to the rules above as if it was a rulemaking document.

3. Docket Number.

- a. Each rulemaking must have its own docket number. The District Staff Judge Advocate (SJA) or, at the discretion of the District Commander, a component field unit, is responsible for providing a docket number for each rulemaking. Each District Commander also determines whether the District SJA or a component field unit is responsible for establishing and maintaining public dockets. The District should coordinate with component field units including Captains of the Port (COTP) to ensure that docket numbers and CFR section numbers are not duplicated.
- b. For COTP regulations, use the following docket number format:
 - (1) “COTP (name of unit)” – calendar year – three number docket designation.

Example: COTP San Diego 05-030

- c. For District regulations, use the following docket number format:
 - (1) “CGD (district number)” – calendar year – three number docket designation.

Example: CGD01 - 05 – 014

- d. At the discretion of their District Commander, field units may use Headquarters docket numbers on field regulations instead of District or COTP docket numbers. All Headquarters rulemakings are assigned unique docket numbers provided by the U.S. Department of Transportation Docket Management System (DMS). DMS offers a single, computerized, easily accessible location where all documents associated with a rulemaking are open to the public. Headquarters docket numbers can be obtained by contacting CG-0943.

4. Regulatory Identification Number.

- a. Generally, each individual rule needs a unique Regulatory Identification Number (RIN). However, because the Coast Guard publishes so many of the same types of rules every year, the U.S. General Services Administration's Regulatory Information Service Center (RISC) and the U.S. Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) have designated certain categories of rules as "routine and frequent" and given the Coast Guard permanent RINs for them. The permanent, categorical RINs are:

<u>33 CFR</u>	<u>RIN</u>
Part 100 (Regattas and Marine Parades)	1625-AA08
Part 110 (Anchorage)	1625-AA01
Part 117 (Bridges)	1625-AA09
Part 147 (Outer Continental Shelf Safety Zones)	Call CG-0943
Part 162 (Inland Water Way Navigation)	Call CG-0943
Part 165 Subparts C & D (Safety and Security Zones)	1625-AA00
Part 165 Subpart B (Regulated Navigation Areas)	1625-AA11
Part 165 Subpart G (Naval Vessel Protective Zones)	Call CG-0943

Example: RIN 1625-AA00 is used for all regulations concerning safety zones.

- b. Certain other Coast Guard field regulations have not been given their own "routine and frequent" designation. A field unit drafting a rule not covered by a permanent, categorical RIN must request a RIN from CG-0943, which will, in turn, request a RIN from RISC.
5. **Title**. The title caption identifies what type of field regulation the rule is, and provides descriptive information identifying either the location or the event.

Example: Safety Zone; San Diego Bay, San Diego, CA.

6. **Agency**. The "Agency" caption identifies the federal agency that is issuing the rulemaking document. All Coast Guard rulemaking "Agency" lines read: **AGENCY: Coast Guard, DHS.**
7. **Action**. The "Action" caption identifies the type of document that is being issued. In the "Action" caption, only the first letter of the first word is capitalized.

Example: Temporary final rule; request for comments

8. **Summary.** Each NPRM and final rule is required by 1 CFR 18.12 to contain a preamble which will inform persons who are not experts in the subject area of the basis and purpose of the rule or proposal. To meet this requirement, the preamble must include, at a minimum, an introductory summary which in simple terms states (1) the action being taken, (2) the circumstances which create the need for the action, and (3) the intended effect of the action.

Example: SUMMARY: The Coast Guard is establishing two temporary safety zones, a stationary safety zone and a moving safety zone, on the navigable waters of San Diego Bay in support of the Fleet Week Sea and Air Parade. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the COTP or his designated representative.

9. **Dates.** The “Dates” section identifies either the period that a rule is effective, or the comment period for the proposed rule. For an effective rule, the “Dates” section should state the earliest date and time that the rule is effective until the latest without any gaps. For a proposed rule, the “Dates” section should state the last date that the Coast Guard will accept comments on the proposed rule. For further guidance on proposed rules, see Chapter 3, Section 16. For further guidance on effective rules, see Chapter 3, Section 17.

Example: DATES: This rule is effective from 11:30 a.m. (PDT) on October 4, 2003, through 3 p.m. (PDT) on October 4, 2003.

Example: DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after publication in the FEDERAL REGISTER].

10. **Addresses.** The “Addresses” section identifies any addresses that the public needs to know for purposes of the rulemaking. All addresses provided must be complete. All rulemakings must provide the address where the rulemaking’s docket is located and maintained. All proposals must also include the address to which comments may be sent. Do not include information other than addresses in the “Addresses” caption. Place other information, such as any discussion of how to submit comments, how to register for a meeting, a meeting agenda, and the content of material available for public inspection in the “Supplementary Information” section.

Example: ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03-030] and are available for inspection or copying at U.S. Coast Guard, Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101-1064, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Example: ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District , Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, 70130, or comments may be hand delivered to Room 1341 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal

holidays. Commander, Eighth Coast District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the location listed above during the noted time periods.

11. **For Further Information Contact.** The “For Further Information Contact” section identifies the name and telephone number of a person within your agency who can answer questions about the document. You must list at least one person, and may list two or more persons to contact concerning different aspects of the document.

Example: FOR FURTHER INFORMATION CONTACT: Petty Officer John Jones, USCG, c/o U.S. Coast Guard Captain of the Port, San Diego, at (619) 683-6495.

12. **Supplementary Information.** In this section you must discuss (1) the regulatory history of the rulemaking, (2) the rule’s basis and purpose, (3) the provisions of the rule and (4) all required statutory and Executive Order (E.O.) analysis.

13. **Regulatory Information.**

- a. The Regulatory Information section discusses the regulatory history of the rulemaking. Indicate here whether there were any previous publications concerning the rule such as an NPRM, an Advance Notice of Proposed Rulemaking (ANPRM), or a Temporary Final Rule (TFR). If there were any documents associated with the rulemaking that were previously published in the *Federal Register*, include citations to those documents. The *Federal Register* citation format is (volume number) FR (page number).

Example: 71 FR 5162 refers to a document that begins on page 5162 of the 71st volume of the *Federal Register*.

- b. If you are preparing an effective rule and you have not previously published a NPRM, you must discuss your good cause for not publishing an NPRM in this section. Also, if you are drafting a rule that will become effective prior to 30 days after publication in the *Federal Register*, you must discuss your good cause for not doing so here.

14. **Background and Purpose.** The “Background and Purpose” section discusses the circumstances that gave rise to the need for the rulemaking, and how the rule intends to address those circumstances. This section should be a clear, straightforward statement of the background and reasons why the rule is needed, and does not go into the detail of the specific provisions of the rule.

15. **Discussion of Rule.** The “Discussion of the Rule” section is a brief description of the actual provisions of the rule. The purpose of this section is to better inform the public, many of whom are not subject matter experts, about the provisions of the rule and the expected burden on the public.

16. **Provisions for a Proposed Rule.** In addition to the general preamble information and provisions discussed above, each NPRM preamble must also include the following information and sections:

- a. In the “Addresses” section, the address to which comments may be mailed or hand delivered, and the normal business hours and place for inspecting and copying materials in the docket.
- b. In the “Dates” section, the comment period closing date. The comment period closing date in each proposed regulation is normally 30 to 90 days after *Federal Register* publication. Since this date cannot be determined until 3-5 days before publication, the draft should read:

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after publication in the FEDERAL REGISTER].

The *Federal Register* will fill in the proper date based on the information placed in the brackets, which is an instruction to the *Federal Register* editor.

c. **Request for Comments.** This section needs to state that:

- (1) Members of the public may participate in the rulemaking by submitting comments;
- (2) Their comments should include their names and addresses, identify the NPRM by docket number, identify the specific section(s) to which their comments apply, and give reasons in support of the comments;
- (3) Copies of all written comments received will be available for examination and copying;
- (4) The rule may be changed in light of the comments received; and
- (5) All comments received before the expiration of the comment period will be considered before final action is taken on the NPRM.

e. **Public Meeting.** This section needs to state:

- (1) Whether or not a public meeting is planned and, if so, when and where it will be held;
- (2) If a public meeting is not planned, include a statement to the effect that a request for a public meeting may be submitted, an address where it may be submitted, and a statement to the effect that if the Coast Guard determines that a public meeting would aid this rulemaking, the Coast Guard will hold one at a time and place announced by a later notice in the *Federal Register*.

17. **Provisions for an Effective Rule.**

- a. In addition to the general preamble information and provisions discussed above, each effective rule preamble must also include the following information and sections:
 - (1) In the “Dates” section, the effective dates of the regulation.
 - (2) If the rule is preceded by an NPRM, the regulatory history must be described in the “Regulatory Information” section.
 - (3) If the rule is not preceded by an NPRM, the “Regulatory Information” section must include a statement of good cause for not publishing an NPRM. This statement is required by 5 U.S.C. § 553(b).
 - (4) If the rule is made effective less than 30 days after publication, include in the “Regulatory Information” section a statement of good cause. This statement is required by 5 U.S.C. § 553(d).
- b. The effective date of most final rules must be at least 30 days after (1) service on affected parties, or (2) publication of the rules in the *Federal Register*. However, 5 U.S.C. 553(d) contains limited exceptions to this requirement. Emergency safety and security zones are typically made effective immediately in reliance upon this provision.
- c. If the regulation becomes effective on the date of publication in the *Federal Register*, the “Dates” section will read: “Dates: This rule is effective on [Insert date of publication in the Federal Register].” If the rule is to be effective some number of days after publication in the *Federal Register*, then state the number of days in the brackets. For example if the rule is effective 5 days after publication the bracketed text must read “[Insert date 5 days after date of publication in the FEDERAL REGISTER].”

18. **Discussion of Comments / Changes to Rule.** If an NPRM was published and any comments were received on the NPRM, the final rule must have a section devoted to a discussion of the comments and any changes to the regulatory text that were made as a result of the comments(s). It is vital that every comment that is timely received be discussed.

19. **List of Subjects.**

- a. Each document must contain a list of index terms (List of Subjects) for each CFR part number cited in the document’s heading. The terms provide a common vocabulary for indexing the rulemaking documents of all agencies and are the basis of the “CFR Index” prepared by the OFR. That office has already created the list of appropriate subjects for Coast Guard rulemakings, and they are provided below.
- b. The “List of Subjects” is the last item in the “Supplementary Information” section of the preamble. The “List of Subjects” terms must be in alphabetical order and separated by commas. Capitalize only the first word of each term. End the list of terms with a period.

Example:

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

c. The following is the Coast Guard's list of subjects organized by CFR part:

<u>33 CFR Part</u>	<u>List of Subjects</u>
100	Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.
110	Anchorage grounds.
117	Bridges.
147	Continental shelf, Marine safety, water.
162	Navigation (water), Waterways.
165	Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

20. Words of Issuance.

- a. The words of issuance provide: (1) the tie between the rule being issued and the CFR units that it affects; and (2) the bridge between the preamble of the rule being issued and the regulatory changes. Words of issuance are always in the present tense.

Example: For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

- b. Or, in the case of an NPRM:

Example: For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

21. Authority Citation.

- a. Every rulemaking document must cite the authority the Coast Guard relies upon to change the CFR. Give the authority citation in the shortest form. The authority citation appears below the words of issuance.

**Example: The authority citation for part 165 continues to read as follows:
Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.**

- b. The proper authority citations for the CFR parts commonly used in Coast Guard rulemaking are:

Part 100 (Regattas and Marine Parades)

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

Part 110 (Special Anchorage Areas)

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

Part 117 (Bridges)

Authority: 33 U.S.C. 499; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

Part 147 (Outer Continental Shelf Safety Zones)

Authority: 14 U.S.C. 85, 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

Part 162 (Inland Waterways Navigation)

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

Part 165 Subparts B, C and D (Regulated Navigation Areas, Safety Zones, and Security Zones respectively)

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Part 165 Subpart G (Naval Vessel Protection Zones)

Authority: 14 U.S.C. 91 and 633; Department of Homeland Security Delegation No. 0170.1.

22. **Amendatory Instructions.**

- a. Generally, a rulemaking document makes changes to the CFR. While the words of issuance describe the general effect of the rulemaking document, the amendatory instructions give specific instructions using established, standard terms, on how to change the CFR.
- b. Before drafting any amendatory instruction, it is important to first identify the current and official version of the CFR language that you are changing. This can be done by consulting the CFR and the List of CFR Sections Affected. All of the changes to the CFR in a rulemaking must be associated with an amendatory instruction.

c. Additionally, every amendatory instruction must:

- (1) Identify the specific CFR section being changed;
- (2) Place all amendments in CFR numbering order;
- (3) Use of one the standard terms to describe the change; and
- (4) Address all regulatory text set out in your document.

Example: Amend § 165.T11-048 by revising paragraph (b)(3) and adding paragraph (d)(4) to read as follows:

d. For a complete listing of specific “amendatory terms” consult the Federal Register *Document Drafting Handbook*, online at <http://www.archives.gov/federal-register/write/handbook/>. The most common terms used in Coast Guard field regulations are:

Add – means that a new CFR section or subsection is inserted in the CFR.

Example: In § 165.T11-048, add paragraph (e) to read as follows:

Remove – means that an existing CFR section or subsection is being taken out of the CFR.

Example: In § 165.T11-048, remove paragraph (c)(9).

Revise – means that an existing CFR section or subsection is replaced in its entirety. It is important that you specifically identify the CFR section or subsection being revised.

Example: In § 165.T11-048, revise paragraph (b) and the introductory text of paragraph (f)(2) to read as follows:

Suspend – terminates the effectiveness of a CFR section or subsection temporarily or indefinitely. The amendatory language must cite the CFR section or subsection affected. The content of the CFR section or subsection is not changed. During the suspension, the CFR section or subsection is not in effect or enforceable.

Example: In § 165.T11-048, suspend paragraph (c)(3).

23. **Section Headings**. Immediately following the amendatory instruction is the “section heading.” The section heading must indicate the exact section and the title of the rule. The section heading must be underlined, and begins either with the word “Section” or a section symbol (§).

Example: § 165.T11-048 Safety Zone; San Diego Bay, CA.

24. **Regulation Text**. This is the actual text of the new rule as it will be printed in the CFR.

25. **Date.**

- a. Every rulemaking document must bear the date on which the document is signed. The date appears above the signature and after the regulatory text.
- b. The date indicated is the earliest that the rule can be effective. It is important to ensure that the rule is signed and dated on or before the effective period of the rule begins.

26. **Signature Block.**

- a. In order for the rule to be valid it must be signed by competent authority in ink, preferably blue ink to better distinguish the original signature document from copies.
- b. Each District Commander and COTP has the authority to sign safety and security zone regulations. Only a District Commander has the authority to sign regulations concerning anchorages, drawbridges, regulated navigation areas, special local regulations for regattas and marine parades, lightering zones, and Outer Continental Shelf safety zones. A Sector Commander may sign field regulations only if exercising the District Commander or COTP authority necessary for the particular type of regulation being issued. Accordingly, when issuing field regulations, Sector Commanders must sign either as a District Commander or COTP. Only an Area Commander has the authority to sign a Naval Vessel Protective Zone.
- c. Beneath the actual signature is the signature block. The signature block is typed and has the signatory's name, rank, and title.

Example:

John Q. Coastie
Captain, U.S. Coast Guard
Captain of the Port, San Diego

- d. The OFR will **not** accept signatures "by direction" or "for" another individual. The Office of the Federal Register will not accept "alternate" as a signature either. The signatory may be "acting," and if so this must be indicated. If an individual is signing a document as "acting," that individual must be acting at the time they signed the document.

Example:

Janet Q. Coastie
Commander, U.S. Coast Guard
Acting Captain of the Port, San Diego

27. **Proofreading.**

- a. After a document is drafted it should be thoroughly proofread for grammar, style, format and accuracy before being forwarded on to the District SJA's Office for review.

- b. After a document is published in the *Federal Register*, the drafters should proofread it as soon as possible for printing errors. Errors that tend to confuse or mislead the reader or that affect the text of the document should be reported to CG-0943 by telephone. CG-0943 will arrange for corrections to be published or advise the originating command how to prepare a correction.

CHAPTER 4. THE PREAMBLE

- A. The Summary.** Each proposed and final rule is required by Title 1 of the Code of Federal Regulations (CFR) § 18.12 to contain a preamble which will inform persons who are not experts in the subject area of the basis and purpose of the rule or proposal. First, the preamble must include an introductory summary which in simple terms states (1) the action being taken, (2) the problem the action is intended to address, and (3) the intended effect of the action. Although the CFR defines the requirements of the preamble, the term is generally not used as a caption or section heading in regulatory documents.
- B. Statement of Basis and Purpose.**
1. The preamble must contain a statement of basis and purpose. The basis statement should show the need and rationale for the regulation and the purpose statement should show the intended impact or effect of the regulation. These statements will be located in the “Background and Purpose” and “Discussion of the Rule” sections of the document, respectively, and are required by the Administrative Procedure Act (APA), 5 USC § 553.
 2. Various court decisions state that a regulation is not enforceable unless it contains an adequate statement of basis and purpose. The statement does not need to be lengthy, but a court which may review your regulation will not supply a statement that is not already in the regulation document.
- C. Supplementary Information.** A supplementary explanation of the rule or proposal will also be necessary. This explanation should normally include a discussion of the background, major issues, public comments, any changes made to the rule and other pertinent information concerning the rulemaking. 1 CFR § 18.12(c). The explanation should be of sufficient length and detail to provide a clear presentation of the action being taken and the policy and legal considerations involved. See the CG-0943 templates online for detailed examples by following the instructions in Enclosure 2.
- D. Required Regulatory Analysis.** As an agency within the executive branch, the Coast Guard must comply with statutes, Executive Orders (E.O.s) and other Administration policies, such as directives issued by the Department of Homeland Security (DHS). This section surveys the executive branch authorities that often affect the Coast Guard rulemaking environment. Some, like E.O. 12866, are encountered every day, while others come up less often. Chapter 4, Sections E through Q, below, are meant to acquaint field units with several of the executive branch authorities that are likely to be encountered when preparing a field regulation. The “Supplementary Information” section of every proposed and effective rule will usually contain the following subsections beginning with a discussion of “Regulatory Evaluation”.
- E. Regulatory Evaluation.**
1. E.O. 12866, Regulatory Planning and Review (58 FR 51735, 30 Sep. 1993), is the primary Presidential directive governing agency rulemaking. E.O. 12866 classifies regulations as

significant, nonsignificant, or emergency. Significant regulatory action is defined as one likely to result in a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - (d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866 (see Section 3(f)).
2. Federal agencies are prohibited by E.O. 12866, Section 8, from publishing in the *Federal Register* significant regulatory actions before receiving approval from the Office of Management and Budget (OMB). The head of an issuing agency is also required to review each significant regulation before issuance in accordance with extensive review procedures set out in DHS Order 2100.5. Further, Secretarial clearance of each significant regulation is required. For these reasons, the Commandant has reserved the authority to issue all significant regulations. Accordingly, if a field unit finds that a regulation it is considering could reasonably be expected to be a significant regulatory action, the unit must contact CG-0943.
 3. Almost all field regulations bear a routine and frequent Regulatory Identification Number (RIN) and are nonsignificant (see Chapter 3, Section C, paragraph 4). For routine and frequent field regulations that are clearly nonsignificant and not immediately required for emergency reasons, use the CG-0943 template language for this subsection stating that the proposed rule is not a significant regulatory action. Field regulations that are not routine and frequent must be cleared by the DHS Office of General Counsel if the regulation is nonsignificant, and by the Office of the Secretary of the DHS if the regulation is significant.
 4. Emergency field regulations that are nonsignificant must be published in the *Federal Register* as soon as possible unless the regulation expires before it can be published. Under E.O. 12866, Section 6(a)(1)(D), field units may adopt emergency regulations that are significant regulatory actions, but the Coast Guard must notify OMB and comply with the ordinary extensive review procedures to the extent practicable. In the event a field unit needs to issue an emergency regulation that is expected to be a significant regulatory action, the unit must notify CG-0943.
 5. Comments on a notice of proposed rulemaking (NPRM) will sometimes address the regulatory evaluation. These comments, and the action taken on them, should be included in the "Regulatory Evaluation" section accompanying the final rule. The NPRM regulatory evaluation may include, when appropriate, a specific request from the Coast Guard for comments on how to improve the accuracy of estimates and supporting data, especially when the estimates or data are known or suspected to be questionable or incomplete. Every effort

should be made to ensure that decisions made in preparing regulations are based on adequate information concerning the need for and consequences of the contemplated action.

F. Small Entities.

1. The *Regulatory Flexibility Act* (RFA), 5 U.S.C. §§ 601, et seq., requires most *proposed* regulations published on or after 1 January 1981 to be analyzed for their economic impact on small businesses, small organizations, and small governmental jurisdictions. The Act applies only to regulations that are first published as an NPRM. The Act does not apply to emergency regulations and other regulations that are published without a prior NPRM. Advance Notices of Proposed Rulemaking (ANPRMs) are also exempt from the RFA provided they contain no regulatory text. DHS Management Directive (MD) 0490.1, *Federal Register Notices and Rules*, (January. 24, 2003), Attachments, Part II, § 1.b.
2. When a rulemaking could have a significant economic impact on a substantial number of small entities ("SEIOSNOSE"), the NPRM and final rule must contain a regulatory flexibility analysis, unless the rulemaking is otherwise exempt from 5 U.S.C. § 553. The regulatory flexibility analysis estimates the number of small entities that will be affected, describes what reporting burdens those entities will face, explains what actions have been taken to minimize the burdens on small entities, and evaluates alternatives.
3. Under § 605(b) of the RFA, a regulation may be exempted from the analysis requirements if "the head of the agency certifies that the rule will not, if promulgated, have significant economic impact on a substantial number of small entities." The certification, with supporting reasons, must be included in both the NPRM and final rule preambles.
4. The Secretary of Homeland Security has delegated authority to the Commandant to make certifications under 5 U.S.C. § 605(b), and the Commandant has further delegated that authority to District Commanders, Captains of the Port (COTPs), the Assistant Commandant for Operations, and the Assistant Commandant for Marine Safety, Security and Environmental Protection. 33 CFR 1.05-1(g). CG-0943 provides template preamble language for this subsection certifying that a regulatory flexibility analysis is not required.
5. DHS MD 0490.1, Attachments, Part II, § 1.d, prescribes the contents of the initial regulatory flexibility analysis (IRFA) for a rulemaking with a possible SEIOSNOSE. The MD also prescribes the contents of the final regulatory flexibility analysis (FRFA) for a rulemaking that may be SEIOSNOSE. DHS MD 0490.1, Attachments, Part II, § 1.e. See also, 5 U.S.C. §§ 603 and 604.
6. The RFA defines small entity to mean small business, organization, and governmental jurisdiction. The Coast Guard expects to regulate small organizations and small governmental jurisdictions only on rare occasions. In determining what constitutes a small business, the Coast Guard is using Small Business Administration (SBA) standards in 13 CFR 121.3-10. The determination will not have to be made at all if the economic impact of a regulation is not expected to be significant for any business regardless of size.

7. The RFA does not define the term "significant". Accordingly, what constitutes a significant economic impact in making an RFA certification is left to a case by case determination.
8. The RFA also does not define the term "substantial number". Accordingly, what constitutes a substantial number of small entities in making an RFA certification is left to a case by case determination. The determination does not have to be made at all if the regulation is not expected to have a SEIOSNOSE.
9. Agencies must provide the Chief Counsel for Advocacy of the SBA with a copy of each IRFA. DHS MD 0490.1, Attachments, Part II, § 1.d(4). Send each IRFA to the DHS General Counsel for forwarding to the SBA before publication in the *Federal Register*.
10. In 5 U.S.C. § 610, the RFA also requires existing rules to be reviewed for ways of reducing their SEIOSNOSE. Although § 610 itself provides only for a one-time review, E.O. 12866, § 5, subsequently required agencies to develop plans for the periodic review of significant rules. These periodic reviews are known, somewhat inaccurately, as "610 reviews." DHS requirements for conducting 610 reviews appear in DHS MD 0490.1, Attachments, Part II, § 2. Each rule that was determined to have SEIOSNOSE must be reviewed within 10 years of its effective date, and not later than every 10 years thereafter. The same paragraph of the MD also prescribes the following notice procedure.
 - a. Not later than 9 months before a rule reaches its 10-year review deadline, the agency must publish a *Federal Register* notice and request comments on the rule's impact on small entities, whether the rule continues to be needed, and the desirability of continuing, amending, or rescinding the rule.
 - b. Not later than the rule's 10-year review deadline, the agency must publish a second *Federal Register* notice. If the agency decides to continue the rule without change, the notice simply announces and explains that decision. If the agency decides to amend or rescind the rule, it issues an NPRM or final rule.
 - c. Both notices must be submitted to the SBA Chief Counsel for Advocacy through the DHS Associate General Counsel.

G. Assistance for Small Entities. Section 213(a) of the *Small Business Regulatory Enforcement Fairness Act* (Public Law 104-121) requires agencies promulgating regulations to offer to assist small entities to better understand the proposed rule, the rule's effects, and how to participate in the rulemaking process. If assistance is provided, it must be described in the preamble to the effective rule. DHS MD 0490.1, Attachments, § 3 requires that Small Business Compliance guides be provided to small entities for each final rule that is determined to be SEIOSNOSE..

H. Collection of Information.

1. The *Paperwork Reduction Act* (PRA), 44 U.S.C. §§ 3501-3520, requires agencies to consider the public impact of their requirements for reporting or recordkeeping (also called "collection of information" (COI)). OMB must specifically approve any new COI requirements imposed on 10 or more persons by the agency. These burdens can be imposed by any agency action,

including but not limited to rulemaking. Without OMB approval, the agency cannot enforce its COI requirement. Each agency has an information collection budget that limits the permissible impact of its COI requirements. Potential COI requirements need to be coordinated by the project counsel with Commandant (CG-611); see the *Information and Life Cycle Management Manual*, COMDTINST M5212.12 (series), chapter 5 and DHS MD 0490.1, § VI.C.4.a.

2. In its Attachments, Part III, DHS MD 0490.1 provides rules and guidance for complying with the PRA. Submit documents containing a COI to OMB through the DHS General Counsel and the DHS Office of Administration. Generally, OMB should be given 60 days for review. If the required submission cannot be made to OMB at least 30 days prior to anticipated publication, offices and directorates must consult with the DHS General Counsel. Part III also specifies language that must be included in the preambles to rulemaking documents that contain a reporting or recordkeeping requirement.
3. Forms used in collecting information must satisfy the requirements of 5 CFR § 1320.8. That CFR section requires each form used for collection of information to display a valid OMB control number. In addition, Commandant (CG-611) currently requires each form used for COI to carry two specific statements: “An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number” and “The Coast Guard estimates that the average burden for this report is [fill in the estimated number of hours] hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (CG-611), U.S. Coast Guard, 2100 2nd Street, SW, Washington, DC 20593-0001.”
4. The *Government Paperwork Elimination Act*, 44 U.S.C. § 3504, requires agencies to accept electronic signatures and maintain, submit, and disclose electronic information as a substitute for paper “when practicable.” This requirement took effect 21 Oct. 2003. The *Electronic Signature in Global and National Commerce Act*, 15 U.S.C. §§ 7001-7031, establishes the legal equivalence of electronic and traditional signatures and documents in private commerce. With exceptions, the act allows for electronic documentation in lieu of paper whenever existing Federal laws or regulations demand paper. Additionally, the *Small Business Paperwork Relief Act of 2002*, 44 U.S.C. §§ 3504(c)(6), 3506(i)(1), and 3520, require agencies to make efforts to further reduce the information collection burden for small businesses with fewer than 25 employees.

I. Federalism.

1. Federalism implications are those having substantial direct effects on States, or on the distribution of power and responsibilities among the various levels of government. E.O. 13132, *Federalism* (64 FR 43255, 10 Aug. 1999), orders agencies to engage in rulemaking that has federalism implications only when a problem is of national significance. Agencies must provide maximum administrative discretion to the States.
2. Agency rules must avoid unnecessarily preempting State law or restricting State and local discretion, and must follow explicit consultation requirements designed to maximize State and local government participation in rulemaking. The Federal government must assist State and

local governments with the direct financial costs of compliance. Agency rulemaking documents must contain a statement describing the impact the rule will have and how the agency has sought to comply with the E.O.

3. Those rulemakings that have federalism implications must supply a federalism assessment that:
 - a. Contains a certification by the General Counsel that the rule was assessed in accordance with the EO;
 - b. Identifies aspects of the rule that are inconsistent with principles, criteria, or requirements set out in the EO;
 - c. Identifies additional costs or burdens that the rule imposes on States, and describes their ability to fulfill the purposes of the rule and to obtain funding; and
 - d. Identifies the rule's effect on the performance of traditional State governmental functions or other aspects of State sovereignty.
4. If a field unit expects a rulemaking to have federalism implications, contact CG-0943. A template for this subsection when the rule does not have tribal implications can be found online by following the instructions in Enclosure 2.

J. Unfunded Mandates Reform Act. Title II of the *Unfunded Mandates Reform Act*, 2 U.S.C. §§ 1532-1538, requires agencies to assess the effects of their rulemakings on State, local, and Native American tribal governments and on private industry. Impacts exceeding \$100 million, adjusted for inflation, must be discussed in written statements that explore alternatives and that reflect consultation with affected entities. Field units should contact CG-0943 when a rulemaking could involve an unfunded mandate in excess of \$100 million. A CG-0943 template for this subsection when no unfunded mandate will result from the rule can be found online by following the instructions in Enclosure 2.

K. Taking of Private Property.

1. E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, 18 Mar. 1988), requires agencies to conduct risk analyses before adopting rules that could effect a taking of private property, including licenses, permits, or other conditions or limitations on private property use.
2. DHS MD 0490.1, Attachments, Part V, § 2 requires that a Takings Implication Assessment accompany a rulemaking document when the proposed rule affects or may affect the use or value of private property. If the proposed rule would regulate private property for the protection of public health or safety, the agency must:
 - a. Identify the health or safety risk with specificity;
 - b. Establish that the proposal substantially improves protection against the risk;

c. Establish that the impact on private property is not disproportionate, and;

d. Estimate the potential cost to the government should a court subsequently determine that the action constitutes a taking.

3. Field units should contact CG-0943 if a rule would involve a taking of private property. A CG-0943 template for this subsection when no interference with constitutionally protected property rights will result from the rule can be found online by following the instructions in Enclosure 2.

L. Civil Justice Reform. E.O. 12988, *Civil Justice Reform* (61 FR 4729, 7 Feb. 1996), requires agencies to review existing and new rules to make sure they are free from drafting errors and ambiguity, to provide a clear legal standard for affected conduct, and to meet other criteria. A CG-0943 template for this subsection when the rule complies with the E.O. can be found online by following the instructions in Enclosure 2.

M. Protection of Children. E.O. 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, 23 Apr. 1997), requires an agency to provide OMB with an evaluation of the environmental health or safety effects of a planned rulemaking, along with an explanation of why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency, whenever the agency engages in substantive rulemaking that is likely to be economically significant under E.O. 12866 (see Chapter 4, Section E), and that concerns an environmental health risk or safety risk that the agency has reason to believe may disproportionately affect children. Thus, if a rulemaking is not a significant regulatory action under E.O. 12866, then E.O. 13045 is not invoked. A CG-0943 template for this subsection when the rule will result in no environmental risk to health or safety that may disproportionately affect children can be found by following the instructions in Enclosure 2. Field units should contact CG-0943 if an economically significant rule could disproportionately affect the health or safety of children.

N. Indian Tribal Governments.

1. E.O. 13175, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, 9 Nov. 2000), orders agency rule makers to respect tribal self government and sovereignty, to consult with tribal officials on the need for federal standards, and to provide maximum administrative discretion to tribal governments. It pertains to rulemakings with tribal implications, defined as actions that have substantial direct effects on one or more Indian tribes, or on the relationship or distribution of power and responsibilities between the federal government and Indian tribes.
2. If a field unit expects a rulemaking to have tribal implications, contact CG-0943. A template for this subsection when the rule does not have tribal implications can be found online by following the instructions in Enclosure 2.

O. Energy Effects.

1. E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, 22 May 2001), requires an agency to provide the OMB with a Statement of Energy Effects any time it considers a rulemaking that constitutes a significant energy action. Significant energy actions are those rulemakings, including notices of inquiry, ANPRMs and NPRMs that are significant under E.O. 12866 (see Chapter 4, Section E), and that are likely to have an adverse effect on the supply, distribution, or use of energy. OMB can declare a rulemaking to be a significant energy action without Coast Guard concurrence. The Statement of Energy Effects details the rulemaking's adverse impact and explores alternatives, and must accompany the NPRM and final rule.
2. When a rulemaking is not a significant regulatory action under E.O. 12866, then E.O. 13211 is not invoked. A CG-0943 template for this subsection when the rule is not likely to result in a significant adverse affect on the supply, distribution, or use of energy can be found online by following the instructions in Enclosure 2. Contact CG-0943 if a rule is likely to result in a significant adverse affect on the supply distribution or use of energy.

P. Technical Standards.

1. The *National Technology Transfer and Advancement Act*, 15 U.S.C. § 272 note, requires agencies to use consensus technical standards maintained by voluntary organizations and to consult with those organizations whenever possible. These standards are related to specifications of materials, performance, design, or operation; test methods; sampling procedures; and some management system measurements.
2. When a rulemaking involves technical standards, but does not utilize consensus standards, the agency promulgating the rule is required to explain to Congress, through the OMB, why use of consensus standards would be inconsistent with applicable law or otherwise impractical. A CG-0943 template for this subsection when the rule will not involve technical standards can be found online by following the instructions in Enclosure (2).

Q. Environment.

1. The *National Environmental Policy Act* (NEPA), 42 U.S.C. §§ 4321-4347, requires agencies to conduct an Environmental Assessment (EA) to evaluate the impact of each rulemaking on the environment. If the EA results in a finding of no significant impact (FONSI), no further action is needed. If the EA shows a significant impact, the agency must prepare an environmental impact statement (EIS), which can be a time consuming and labor intensive task. The Coast Guard can skip the EA stage and go directly to the EIS when a significant impact is expected. The NEPA process also allows us to address other important environmental legal requirements, such as historic preservation, coastal zone management, endangered species protection, migratory bird restrictions and others found in Chapter 2D of COMDTINST 16475.1
2. *National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts*, COMDTINST M16475.1 (series) requires that, with few exceptions, an EA must be prepared for each proposed regulation. Certain field regulations are excluded

from this requirement. They include drawbridge and security zone regulations as well as administrative and procedural regulations that clearly do not have any environmental impact.

3. Agencies can identify whole categories of rules that will be FONSI actions, and exclude those types of actions in advance from EA or EIS requirements. Categorical exclusions identified by the Coast Guard are given in COMDTINST M16475.1 (series), paragraph 2.B.2 and Figure 2.1. In many cases, field regulations that are excluded by this Instruction from EA and EIS requirements, **must still file a Categorical Exclusion Determination and an Environmental Analysis Checklist in the docket.** See COMDTINST M16475.1 (series), paragraph 2.B.2 and Figure 2.1 for guidance on the types of field regulations for which a Categorical Exclusion Determination and an Environmental Analysis Checklist must be filed in the docket, and the types of field regulations that are exempt from this requirement..
4. If a proposed field regulation appears to have a significant environmental impact, contact CG-0943 and CG-0942. In that case, the regulation will probably need to be coordinated with the DHS and not be within the scope of authority delegated to field commands.

CHAPTER 5. SIGNING AND TRANSMITTING THE RULE

A. Signature Authority.

1. As discussed in Chapter 3, each District Commander and Captain of the Port (COTP) has the authority to sign and issue safety and security zone regulations. Only a District Commander has the authority to sign and issue regulations concerning anchorages, drawbridges, regulated navigation areas, marine regattas, special local regulations, lightering zones, Outer Continental Shelf safety zones, and unsafe voyages by specific boats. Only an Area Commander has the authority to sign and issue a Naval Vessel Protective Zone. See Chapter 3, Section C, paragraph 26 for guidance on Sector Commander authority, and the use of titles other than District Commander or COTP in signature blocks.

B. Transmittal.

1. **General.** Send the original of each regulatory document, when signed, to CG-0943 for delivery to the *Federal Register*. Copies and transmittal letters are not required.
2. Do not send unsigned documents, and always indicate the date of signature in the appropriate area above the signature. Field unit commanders are responsible for ensuring that their regulations are properly signed and dated. District Staff Judge Advocates (SJAs) are responsible for ensuring that regulations issued by their District Commanders are properly signed and dated.
3. Once a document is signed, do not delay its transmittal. If necessary to permit timely publication before the event involved, or before termination of the associated hazard, send the document via an overnight delivery service.
4. CG-0943 will advise the sender upon receipt of each emergency regulation. With few exceptions, the only emergency regulations will be those that establish safety or security zones to protect against immediate hazards.

C. Sending an E-Version Ahead of the Signed Original.

1. A conformed, editable electronic version of the document should be sent to CG-0943 as early as possible, and certainly not later than the signed original is mailed. Do not send regulatory documents in PDF or any other format that can not be easily edited. It has become a recommended practice that originating units coordinate with their District Staff Judge Advocates (SJAs) as early as possible, and that District SJAs coordinate with CG-0943 as early as possible. The best way to accomplish this is for the District SJA to send a conformed e-version of the rule to CG-0943 as soon as possible after the rule has been signed. This will give CG-0943 additional time to coordinate with the District SJA if any problems exist and will also expedite review of the document.

D. Labeling and Naming Protocols.

1. Because of the large volume of field regulations that CG-0943 processes, it is important that uniform protocols govern file names and e-mail labels.
2. All electronic rulemaking files must be named using the following protocol:
 - (a) Docket number; followed by
 - (b) Underscore symbol; followed by
 - (c) Abbreviated action

Example: COTP San Diego 03-030_tfr

Example: CGD08-03-028_nprm

3. Additionally, the subject line for every e-mail forwarded to CG-0943 must use the same naming protocol.
4. After review by District legal staff, all e-versions are sent to "HQS-DG-1st-CG-0943-field".

E. Sending the Signed Original.

1. The signed original may be sent to CG-0943 by either standard U.S. mail or by using a commercial carrier such as Federal Express, Airborne Express, UPS, or DHL. It is important, though, to note that there is a possibility that standard mail deliveries will be delayed due to enhanced security screening procedures at Coast Guard Headquarters. If a rule is an emergency rule or has an effective period beginning in the near future, it is recommended that a commercial carrier be used to ensure timely delivery.
2. Send signed originals to the following address:

COMMANDANT (CG-0943)
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, D.C. 20593-0001
3. Again, do not send anything except the signed original. There is no need to send transmittal memos or supporting documentation.

F. Federal Register Publishing Schedule.

1. A document will normally be published within five working days after CG-0943 receives it. CG-0943 arranges for the delivery of each document to the *Federal Register*.
2. An emergency regulation can be published within 2 to 4 working days after receipt in CG-0943. Advise CG-0943 by telephone (202) 372-3864 if expedited handling is needed. CG-

0943 will advise District legal of the date of *Federal Register* publication of emergency regulations.

G. Expedite Letters.

1. In rare emergency circumstances, CG-0943 has the discretion to prepare and send a request to the Office of the Federal Register (OFR) to expedite publication of a rulemaking document.
2. An expedite letter requests immediate posting and filing on the *Federal Register's* emergency publishing schedule. Generally speaking, an expedite letter will accelerate the publication of the document by 1 business day.
3. It is OFR policy that expedite letters should only be used in emergency situations. It is not a tool of administrative convenience. Units should plan their rulemakings well in advance to the extent possible, and forward the original document to CG-0943 without delay.

H. Copies and Coordination.

1. CG-0943 prepares, certifies, and transmits the appropriate number of required copies of documents to the OFR. CG-0943 is normally the initial contact point to facilitate coordination, if any, between the OFR and the originating field legal office.
2. At the District Commander's discretion, either the District SJA or the field unit obtains the docket number and maintains the docket. The office responsible for these actions is also required to permanently maintain a copy of the signed document.

I. Congressional Review Act.

1. The *Congressional Review Act* (CRA), 5 U.S.C. §§ 801-808, requires submission of final rules, including interim rules, temporary rules, and direct final rules, to Congress before they take effect. The Act also delays the effective date of significant rules for 60 days, during which Congress can review the rule and block it from ever taking effect. CG-0943 prepares the appropriate copies and documentation required to satisfy the Act.

CHAPTER 6. DOCKETING

A. The Public Docket.

1. A rulemaking docket must be maintained for each rulemaking. The docket must be available for public inspection and copying during normal business hours.
2. The docket file should include each regulatory document published in the rulemaking, all public comments received on the notice of proposed rulemaking (NPRM) documentation of all public contacts resulting in comments on the merits of the NPRM, the evaluations required by the Department of Homeland Security, Executive Orders, or statute, an environmental assessment, and any relevant studies and materials considered in the rulemaking.

B. Docket Numbers.

1. Each rulemaking must have its own docket number. The District Staff Judge Advocate (SJA) or, at the discretion of the District Commander, a component field unit, is responsible for providing a docket number for each rulemaking. Each District Commander also determines whether the District SJA or a component field unit is responsible for establishing and maintaining public dockets. The District should coordinate with component field units including Captains of the Port (COTP) to ensure that docket numbers and Code of Federal Regulations section numbers are not duplicated.
2. At the discretion of each District Commander, field units may use Headquarters docket numbers on field regulations instead of District or COTP docket numbers. All Headquarters rulemakings are assigned unique docket numbers provided by the U.S. Department of Transportation Docket Management System (DMS). The E-Government Act of 2002 requires federal agencies to use an internet accessible rulemaking docket that contains all public comments and other relevant documents. DMS offers a single, computerized, easily accessible location where all documents associated with a rulemaking are open to the public. Headquarters docket numbers can be obtained by contacting CG-0943, and DMS dockets can be viewed at <http://dms.dot.gov/>.

3. Each field unit will maintain the dockets for its rulemakings.

- a. *COTP Regulations.* Use the following docket number format:

“COTP” – Name of field command – calendar year – three number docket designation.

Example: COTP San Diego 03-030

- b. *District Regulations.* Use the following docket number format:

“CGD” – Numerical District designator – calendar year – three number docket designation.

Example: CGD01 - 03 – 014

- c. *Headquarters Docket Numbers:* The following docket number format is used:

“USCG” – Name of federal agency – calendar year – five number docket designation.

Example: USCG-06-12345

C. Retention of Dockets.

1. A docket contains the administrative record of a rulemaking. The importance of the administrative record can not be overemphasized. It documents the basis for the Coast Guard’s decision to adopt a rule, as well as the reasons for the specific provisions of the rule. A complete docket is absolutely essential to defend the Coast Guard if a regulation is challenged in court, and to facilitate public participation in the rulemaking process.
2. Rulemaking dockets are public records that must be retained for at least three years and, thereafter, transmitted to the Federal Records Center where district records are stored.

CHAPTER 7. POST – PUBLICATION

A. General.

1. If a rule is preceded by a notice of proposed rulemaking (NPRM), drafting of the effective rule should not be completed until the comment period has closed and all comments received on time have been thoroughly reviewed.
2. The effective rule must address every comment that was received on time, either individually or in categories, and how the rule has changed in light of those comments. If the proposed rule is substantially changed as a result of comments received, it may be necessary to redraft the rule and republish it as a Supplemental Notice of Proposed Rulemaking (SNPRM)..
3. The drafters must also consider whether to hold a public meeting if one is requested. If a meeting was requested and not held, the preamble to the effective rule must explain why.

- B. After the Fact Comment Period.** If a final rule is not preceded by a notice of proposed rulemaking and is to remain in effect for 4 months or more, an after-the-fact comment period should normally be provided. The same should also normally be provided when publishing an interim rule (IR). The final rule (or IR) preamble should include the following statement if an after-the-fact comment period is being provided:

Although this regulation is published as a final rule (or IR) without prior notice, public comment is nevertheless desirable to ensure that the regulation is both workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulation may be changed.

C. Public Meetings.

1. On occasion, public meetings are held on proposed rules if needed as an aid in obtaining comments. These meetings are informal. The Coast Guard official in charge of the meeting normally opens the meeting with an introductory explanation of the proposed rules and members of the public are invited to make oral presentations. The official in charge of the meeting may limit repetitive comments and questions.
2. A record of the meeting must be prepared. A verbatim record is not required, except in hearings on proposed drawbridge regulations. See *Bridge Administration Manual*, COMDTINST 16590.5 (series), para. 5-F-3. For all other types of field regulations, a summary of each meeting must be prepared and posted in the docket.
3. If a public meeting is not planned, members of the public have the right to request one, and the public should be informed of these facts in the preamble to the proposed rule. CG-0943 boilerplate on this subject is available in any of the NPRM templates, which can be accessed online by following the instructions in Enclosure 2.

D. Guidelines for Meeting the Public in a Rulemaking.

1. Persons directly responsible for a rulemaking project should undertake to have contact with the public whenever the contact will be helpful in resolving substantive questions in the project. Public contact after the close of the comment period, though, should be kept to a minimum.
2. When Coast Guard personnel who are directly involved in preparing specific regulations, or who are in a position to influence development of the regulations, communicate with members of the public who furnish information or express views on the substance of the regulations, the substance of those communications should be posted on the docket.
3. If the communication occurs before publishing a proposed rule and affects the reason(s) for issuing the rule, the substance of the communication should be documented in the preamble of the proposed rule. If good reason exists for not reporting the contact in the preamble, a report should be placed in the public docket when the proposed rule is published.
4. If the communication occurs after a proposed rule is issued, the communication should be documented by promptly posting a report in the docket. Each report of a public communication should list the participants, a summary of the discussion, and any commitments made.

E. Responding to Public Comments. If a proposed rule is changed in light of public comments received, the preamble to the effective rule must discuss the changes made. If the changes are substantial, though, a SNPRM should be issued before finalizing the rule. In those instances when the Coast Guard disagrees with comments, it must also explain why in the preamble to the effective rule.

F. Proofreading and Corrections. After a document is published in the *Federal Register*, the drafters at the field unit should proofread it as soon as possible for printing errors. Errors that tend to confuse or mislead the reader or that affect the text of the document should be reported to CG-0943 by telephone. CG-0943 will arrange for corrections to be published or advise the field unit on how to prepare a correction.

G. Quarterly Report.

1. All Coast Guard rulemakings must be sent to CG-0943, even if the effective period has expired. Four times every calendar year, CG-0943 publishes a "Quarterly Notice" of expired field regulations to satisfy the *Administrative Procedure Act* requirement that all rules be published in the *Federal Register*.
2. This notice includes a list of all Coast Guard field regulations that arrived in CG-0943 after the effective period expired. The actual rules are scanned onto the Docket Management System so that they may be viewed by the public.

H. Canceling a Proceeding After Publishing an NPRM. If an NPRM is published and a decision is made thereafter to withdraw the proposal and cancel the proceeding, a notice containing a statement of reasons in support of the decision to withdraw must be published in the *Federal Register*. All comments received from the public in response to the NPRM must be addressed in

the notice, and the basis for canceling the rulemaking must be reasonable. A CG-0943 template for a cancellation notice is available online by following the instructions in Enclosure 2.

ENCLOSURE 1 - BASIC PROCESS CHECKLIST

- (1) The field unit receives a request for a regulation or otherwise determines that a regulation is needed (remember to distinguish between a request for a regulation and a request for a marine event permit).
- (2) Chart the area covered by the requested regulation.
- (3) Determine whether a new regulation is necessary by checking on whether the needed regulation already exists.
- (4) If you're sure you know what type of regulation you need, (for example, a Safety Zone or a Regulated Navigation Area), and what kind of document you need (for example, a notice of proposed rulemaking (NPRM) or an advance notice of proposed rulemaking), obtain a copy of the necessary CG-0943 template online by following the instructions in Enclosure 2 and skip to step 7 in this checklist.
- (5) If you're not sure what type of rule is needed, look to *Types of Coast Guard Field Regulations* in Chapter 1, Section M of this manual. If this manual doesn't answer your question, consult your District Staff Judge Advocate's (SJA) Office.
- (6) If you're not sure what kind of document is needed, see *Different Kinds of Notices, Rules, and Requests for Comment* in Chapter 1, Section N of this manual. When considering what kind of document to write, you will also need to consider whether it will be appropriate to claim a good cause exemption to the requirement for notice and comment, and / or the requirement for at least 30 days notice to the public before the rule takes effect. Reviewing the Introduction and Sections A through D of Chapter 1 of this manual will help you make these decisions. If this manual doesn't answer your questions, consult your District SJA Office.
- (8) Obtain a docket number. Depending upon your District Commander's policy, either the field unit or the field unit legal office will provide a docket number for your rulemaking. See Chapter 6 of this manual for more information about dockets and docket numbers.
- (9) Write your document following the appropriate template. Be sure the "Statement of Background and Purpose" and "Discussion of the Rule" sections are complete. Chapter 3 at p. 3-1 and Chapter 4, Section B will tell you more about these sections. If you have questions on any section of the document, you can find guidance listed by section title in Chapters 3 and 4 of this manual. Also, see Enclosure 3 for a matrix that cross references each type of regulation with the correct Regulatory Identification Number (RIN), National Environmental Protection Act categorical exclusion citation, List of Subjects, authority citation, and level of commander authorized to sign the document.
- (10) If your document is to be signed by the District Commander, send it to your District SJA's Office for review prior to signature. The District SJA is responsible for ensuring your document is legally sufficient, in the proper format, and signed and dated by the appropriate person.

Chapter 3, beginning on p. 3-10 and Chapter 5, Section A, of this manual provides information about which officers are authorized to sign different types of field regulations. For those field regulations signed at a unit subordinate to a District Commander, the Commanding Officer of the issuing office is responsible for ensuring that the document is signed, dated, and in the proper format. Questions concerning legal sufficiency should be forwarded to the District SJA.

- (11) Mail the signed original document to CG-0943 and email an electronic version to HQS-DG-1st-CG-0943-field.” See Chapter 5, Sections B through H, for instructions on transmitting the document.
- (12) CG-0943 reviews the document to ensure that it appears to be fit for publication in the *Federal Register*. Keep in mind that the District SJA remains responsible for format and legal sufficiency. CG-0943 then certifies and forwards the original document to the *Federal Register*. The CG-0943 processing time varies. If the District is able to send an electronic version of the document in advance, the processing time within CG-0943 can be reduced significantly.
- (13) The Office of the Federal Register (OFR) publishes the document in the *Federal Register*. Allow four working days from the date on which the OFR receives the document from CG-0943 to the publication date.
- (14) The field unit and the District SJA’s Office proof read the document published in the *Federal Register* for any errors the Government Printing Office may have introduced during transcription. See Chapter 7, Section F, for information on proof reading.
- (15) At the discretion of the District Commander, either the field unit or the District SJA’s Office maintains the public docket. Chapter 6 of this manual provides helpful information about maintaining the docket.

NOTE: It normally takes a minimum of ninety days, not including processing time, to publish an NPRM followed by a final rule.

ENCLOSURE 2 - DIRECTIONS TO ELECTRONIC TEMPLATES

1. The CG-0943 *Federal Register* document templates are available online.
 - a. Go to the CG Central home page.
 - b. Click on “Communities.”
 - c. Click the plus sign to the left of “Command”, then click on “Legal.”
 - d. Under “Tools”, click on the link to “*Federal Register* Document Drafting Templates.”

ENCLOSURE 3 – REGULATION MULTI – FIELD MATRIX

33 CFR¹	RIN 1625²	Categorical Exclusion Figure 2-1³	List of Subjects⁴	Authority⁵	Format for Temporary Section #s⁶	Who can sign?⁷
Anchorage Part 110	AA01	Paragraph (34)(f)	Anchorage grounds	33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.	110.T##-###	District Commander (DC)
Bridges Part 117	AA09	Paragraph (32)(e)	Bridges	33 U.S.C. 499; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.	117.T###	DC
Marine Events & Regattas Part 100	AA08	Paragraph (34)(h)	Marine safety, Navigation (water), Reporting and record keeping requirements, waterways	33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.	100.35T-##- ###	DC
OCS Safety Zones Part 147	AA00	Paragraph (34)(g)	Continental shelf; Marine safety; Navigation (water)	14 U.S.C. 85; 43 U.S.C. 1333; 49 CFR 1.46.	147.T##-###	DC

Regulated Navigation Areas Part 165	AA11	Paragraph (34)(g)	Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways	33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.	165.T##-###	DC
Safety Zones Part 165	AA00	Paragraph (34)(g)	“	“	165.T##-###	Captain of the Port (COTP) or DC
Security Zones Part 165	AA87	Paragraph (34)(g)	“	“	165.T##-###	COTP or DC

Sources of Information:

¹Code of Federal Regulations (CFR).

² Regulation Identifier Numbers from Unified Agenda for Coast Guard projects with Routine-and-Frequent priority.

³[COMDTINST M16475.1D](#).

⁴[Federal Register CFR List of Subjects](#).

⁵CFR (immediately after table of contents for parts, and after subpart heading for subparts)

⁶[List of Sections Affected](#) (LSA); the "##-###" format = CG District number followed by sequential number assigned by District.

⁷33 CFR 1.05-1.

ENCLOSURE 4 – LIST OF ABBREVIATIONS USED IN THIS MANUAL

ANPRM	Advance Notice of Proposed Rulemaking
APA	Administrative Procedure Act (5 U.S.C. § 553)
CFR	Code of Federal Regulations
COI	Collection of Information
DFR	Direct Final Rule
DHS	U.S. Department of Homeland Security
DMS	U.S. Department of Transportation Docket Management System
DDH	Federal Register Document Drafting Handbook
EA	Environmental Assessment
EIS	Environmental Impact Statement
E.O.	Executive Order
FONSI	Finding of No Significant Impact
FRFA	Final Regulatory Flexibility Analysis
GPO	U.S. Government Printing Office
IR	Interim Rule
IRFA	Interim Regulatory Flexibility Analysis
LSA	List of Sections Affected
MD	Management Directive
NEPA	National Environmental Policy Act (42 U.S.C. §§ 4321 – 4347)
NPRM	Notice of Proposed Rulemaking
OFR	Office of the Federal Register

OIRA	U.S. Office of Management and Budget, Office of Information and Regulatory Affairs
PRA	Paperwork Reduction Act (44 U.S.C. §§ 3501 – 3520)
RFA	Regulatory Flexibility Act (5 U.S.C. §§ 601, et.seq.)
RFC	Request for Comment
RIN	Regulatory Identification Number
RISC	U.S. General Services Administration, Regulatory Information Center
SBA	U.S. Small Business Administration
SEIOSNOSE	Significant Economic Impact on a Substantial Number of Small Entities
SJA	Staff Judge Advocate
SNPRM	Supplemental Notice of Proposed Rulemaking
TFR	Temporary Final Rule
TSS	Traffic Separation Scheme
72 COLREGS	International Regulations for Preventing Collisions at Sea